Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1185

MEMORIAL CONSULTANTS, INC.,

Appellant,

vs.

PEOPLE OF THE STATE OF ILLINOIS ex rel. GEORGE W. LINDBERG, Comptroller of the State of Illinois,

Appellee.

On Appeal from the Appellate Court of Illinois, Third District

MOTION TO DISMISS

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Appellee.

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The appellee, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, respectfully moves this Honorable Court to dismiss the appeal herein on the grounds that the appeal fails to present a substantial federal question and that the decision below is so plainly correct as to warrant no further review.

OPINION BELOW

The opinion of the Appellate Court of Illinois, Third District, is reported at 50 Ill. App. 3d 1005, 366 N.E. 2d 127 (1977), and is reproduced in Appendix A of appellant's Jurisdictional Statement.

JURISDICTION

These proceedings were instituted when the appellee filed a complaint in the circuit court of Illinois, seeking compliance by appellant with the provisions of the Illinois Funeral or Burial Funds Act. (Ill. Rev. Stat., 1969, Ch. 111½, §§ 73.101-73.108) Appellant denied that the Act applies to its sales of burial vaults and affirmatively asserted that, if applied to its business, the Act violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The circuit court entered a final judgment in favor of appellant without making any findings.

On appeal, the Illinois Appellate Court, Third District, held that the Act applies to appellant's sales, and that the Act is constitutional as applied to appellant. The Appellate Court denied a petition for rehearing on August 30, 1977. The Illinois Supreme Court denied appellant's petition for leave to appeal on November 23, 1977, and its motion for

reconsideration on January 9, 1978. Appellant filed its Notice of Appeal to the Supreme Court of the United States on February 15, 1978. The case was docketed in this Court on February 21, 1978.

Appellant has invoked the jurisdiction of this Court to review the decision of the Illinois Appellate Court, Third District, by virtue of 28 U.S.C. §§ 1257 (2) and 2101 (C).

QUESTION PRESENTED

Is the Illinois Funeral or Burial Funds Act a constitutional exercise of the state police power insofar as it requires that persons who sell funeral merchandise in advance of need hold the proceeds of sale in trust.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Amendment XIV;
Ill. Rev. Stat., 1969, Ch. 111½, §§ 73.101 - 73.108;
Ill. Rev. Stat., 1977, Ch. 21, § 64.2;
Ill. Rev. Stat., 1977, Ch. 21, § 64.4;
Ill. Rev. Stat., 1977, Ch. 73, §§ 951-58.

STATEMENT OF THE CASE

Appellee brought this action as Comptroller of the State of Illinois to enforce the provisions of the Funeral or Burial Funds Act (Ill. Rev. Stat., 1969, Ch. 111½, Sections 73.101 et seq.) against appellant, Memorial Consultants, Inc., an Illinois corporation engaged in the business of selling burial vaults prior to need. Section 1 of the Act provides:

> Any payment of money made to any person, partnership, association or corporation upon any agreement or contract, . . . which has for a purpose . . . the furnishing or delivery of any personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of the person or persons whose body or bodies are to be disposed of, shall be held to be trust funds, and the person, partnership, association or corporation receiving said payments is hereby declared to be a trustee thereof. (Ill. Rev. Stat., 1969, Ch. 111½, § 73.101)

Section 2 of the Act requires the trust funds to be deposited in the name of the trustee within 30 days after receipt. Section 3 requires such trustee to obtain a license from the state comptroller. Section 5 permits the trustee to receive reasonable expenses and compensation not to exceed 5% of the principal and 5% of the earnings of the funds deposited.

The complaint sought an injunction to prevent appellant from doing business without a license; also an accounting of sums collected in violation of the Act and a decree requiring appellant to deposit these sums as required by statute. Appellant denied that it was subject to the Act and affirmatively asserted that the statute, if applied to

appellant, is confiscatory and therefore violates its rights under the due process and equal protection clauses of the Fourteenth Amendment.

The trial court permitted the Illinois State Funeral Directors to intervene as a party plaintiff. Appellant filed a counterclaim alleging in Count I that the association members have combined to eliminate competition and to restrain retail trade of burial vaults in violation of the Illinois Antitrust Act (Ill. Rev. Stat., 1975, Ch. 38, § 60-3). Count II of the countercomplaint asserted a cause of action under 42 U.S.C. § 1983 for deprivation of constitutional rights resulting from enforcement of the Act. After the intervenors were allowed to withdraw, the trial court dismissed without prejudice Count I of the counterclaim, and dismissed Count II as to all counterdefendants except appellee.

The cause was submitted to the trial court upon a stipulation of facts[1] which included the following:

> 1) Appellant uses a contractual agreement to sell burial vaults; burial vaults are merchandise used in connection with the final disposition of a dead human body.

---

1. Appellant erroneously asserts that the facts stated on page 4 of the Jurisdictional Statement were stipulated to or admitted by the pleadings. Except as restated above, all of these "facts" were simply allegations contained in appellant's own pleadings, either in Count I of the counterclaim which the trial court dismissed, or in Count II of the counterclaim to which appellee pleaded insufficient knowledge. Under the Illinois Civil Practice Act, Ill. Rev. Stat., 1975, Ch. 110, Section 40, an answer based on want of knowledge is an alternative to a denial and does not constitute an admission. *In re Estate of Pecoulas*, 98 Ill. App. 2d 440, 240 N.E. 2d 311, 313 (1968).

2) Generally several years time elapses between the completion of payment under the contract and delivery of a burial vault.

3) During the years 1972, 1973 and 1974, appellant entered into some 9,000 such agreements; during these same years a substantial number of the contracts were performed.

4) A funeral normally follows the delivery of a burial vault under appellant's contract; appellant's president knew of no instance in which a burial did not occur when delivery was made.

5) Appellant is not licensed by the state comptroller.

The parties filed written briefs in the trial court regarding the questions of whether appellant's contract is covered by the terms of the Funeral or Burial Funds Act and whether the Act is constitutional. Based on all of the pleadings, the stipulated facts and the written briefs, the trial court entered a judgment order on July 19, 1976 finding for appellant "in bar of plaintiff's cause of action."

On July 29, 1977, the Illinois Appellate Court, Third District, reversed the judgment of the trial court and remanded the cause for further proceedings. The Appellate Court held that the Act applies to appellant's sales despite its contractual provisions allowing delivery of burial vaults upon request and also allowing the purchaser to request delivery for burial of some other person. The Court also held that the Act was constitutional. The appellate court essentially relied on *Memorial Gardens Ass'n., Inc.* v. *Smith,* 16 Ill. 2d 116, 156 N.E. 2d 587 (1959), appeal dismissed 361 U.S. 31, wherein the Illinois Supreme Court had found that the Act is a valid exercise of the state police power in that the Act regulates, and does not prohibit, the business of selling prepaid burial merchandise.

The appellate court denied appellant's petition for rehearing on August 30, 1977. The Illinois Supreme Court denied appellant's petition for leave to appeal on November 23, 1977, and its motion for reconsideration on January 9, 1978.

ARGUMENT

THE REQUIRMENT OF THE ILLINOIS FUNERAL OR BURIAL FUNDS ACT THAT PERSONS WHO SELL FUNERAL MERCHANDISE IN ADVANCE OF NEED HOLD THE PROCEEDS OF SALE IN TRUST IS A CONSTITUTIONAL EXERCISE OF THE STATE POLICE POWER.

A.

The Trust Provisions Of The Act Do Not Violate Appellant's Rights Under The Due Process Clause.

Neither appellant's property rights nor its right to make contracts are absolute; "[e]qually fundamental with the private right is that of the public to regulate it in the common interest." *Nebbia* v. *New York,* 291 U.S. 502, 78 L. Ed. 940, 949 (1933).

Appellant acknowledges that the business of selling burial merchandise is a proper subject for regulation in the exercise of the state police power. (Jurisdictional Statement, p. 8) Because of the public's vital interest in the proper disposition of its deceased members' bodies, persons engaged in this business have traditionally been subjected to rigorous regulation. *Memorial Gardens Ass'n. Inc.* v. *Smith,* 16 Ill. 2d 116, 156 N.E. 2d 587, 593 (1959), appeal dismissed 361 U.S. 31. The exercise of the police power is particularly warranted where pre-need contracts like the present do not anticipate any performance whatsoever by the seller for many years and, in most instances, only after the death of the purchaser. *Id.* at 592, 594.

The police power is clearly the most essential and "always one of the least limitable of the powers of the government." *Eubank* v. *City of Richmond,* 226 U.S. 137, 143, 57 L. Ed. 156 (1912). In exercising the power, the legislature is necessarily vested with broad discretion to determine not only what the interests of the public welfare require, but what measures are necessary to secure those interests. *Terrace* v. *Thompson,* 263 U.S. 197, 217, 68 L. Ed. 255 (1923). Due process demands only that legislation "shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained." *Nebbia* v. *New York,* 291 U.S. 502, 78 L. Ed. 940, 950 (1933). Even this standard is not applied with strict precision since, where a legislative determination is debatable, the legislative judgment must be allowed to control. *Goldblatt* v. *Town of Hempstead,* 369 U.S. 590, 8 L. Ed. 2d 130, 134 (1962). Legislation cannot be refused application as arbitrary and capricious merely because it is deemed in a particular case to work an inequitable result; *Wickard* v. *Filburn,* 317 U.S. 111, 87 L. Ed. 122, 137 (1942); rather, the exercise of the police power will be upheld if any state of facts "either known or which could be reasonably assumed affords support for it." *Goldblatt* v. *Town of Hempstead,* 369 U.S. 590, 8 L. Ed. 2d 130, 135 (1962).

The trust provisions of the Illinois Funeral or Burial Funds Act have a substantial relation to the object sought to be attained by the Act. The evils inherent in pre-need burial contracts have generally been identified as follows. The transaction under the contract does not constitute a present sale, since delivery of merchandise is almost always made after the purchaser's death. On the contract date, the merchandise is not necessarily in the possession of the company nor even in existence. For a period as indefinite as life, the company has possession and control of the purchase money, setting aside only sufficient funds to

pay for the present day cost of the merchandise. Even this indefinite sum is not set aside until the installment contract is paid in full, and the income earned from these funds are to be used for the "best interests of the company." The agreement does not advise purchasers that the greater part of the funds are to be used for operational expenses and commissions. The company collects a service charge from the purchaser, but is not required to make any expenditure whatsoever until some time after request for delivery. In the long interval between full receipt of the purchase price and contract performance, the possibilities of fraud "are great and risk of insolvency, with consequent inability to perform, apparent." *Memorial Gardens Ass'n. Inc.* v. *Smith,* 16 Ill. 2d 116, 156 N.E. 2d 587, 594 (1959), appeal dismissed 361 U.S. 31. Even thought appellant claims it is necessary to deduct almost two-thirds of the purchase price for expenses, and to retain only one-third to cover actual future commitments, appellant assumes no risk regarding an increase in the cost of the merchandise. "Such procedure invites regulation of a stringent nature." *Messerli* v. *Monarch Memorial Gardens, Inc.*, 397 P. 2d 34 (Idaho Sup. Ct. 1964).

The measures used by the Illinois legislature to protect the public interest are reasonable. The Illinois Act does not prohibit pre-need sales, but simply regulates the manner in which appellant may conduct its business. The Illinois legislature has determined that all funds collected under pre-need contracts must be deposited as trust funds, except that the trustee may be reimbursed for reasonable expenses not to exceed 5% of the principal fund and 5% of the fund's earnings. Ill. Rev. Stat., 1969, Ch. 111½, §§ 73.101, 73.105. These trust fund provisions were designed to "assure the purchasers that the company will be able to complete their contracts when the time for performance arrives" *Memorial Gardens Ass'n., Inc.* v. *Smith,* 156 N.E.

2d at 593. It would be highly "unusual to expect or require prospective purchasers to furnish or advance capital funds necessary for the operation of [appellant's] business." *Id.* at 594. The facts that appellant has difficulty conducting its business under the Act, or that the Act might indirectly favor at-need sellers of funeral merchandise, do not render it unconstitutional. This Court has stated that while statutes prohibiting monopolies have been upheld, "[o]n the other hand, where the policy of the state dictated that a monoply should be granted, statutes having that effect have been held inoffensive to the constitutional guaranties." *Nebbia* v. *New York,* 291 U.S. 502, 78 L. Ed. 940, 953 (1933). Moreover,

> Many companies, indeed whole industries, have been forced out of business by governmental regulation. That regrettable consequence does not, however, establish a denial of due process. (*Texas American Asphalt Corp* v. *Walker,* 177 F. Supp. 315, 327 (S.D. Tex. 1959), citing numerous Supreme Court decisions)

Appellant's complaint that the statute gives no recognition for its current expenses is "largely a criticism of the Act." *Falkner* v. *Memorial Gardens Ass'n.*, 298 S.W. 2d 934, 941 (Tex. Civ. App. 1957). This is equally true regarding the Report issued by the Federal Trade Commission concerning proposed trade regulation rules for the funeral industry, which essentially suggests that the state legislatures could enact less stringent regulations. Such criticism, going merely to the amount of the deposit required, properly relates to legislative policy rather than judicial determination. The Court will not sit as a super-legislature to weigh the wisdom of legislaton, or to invoke the due process clause so as to strike down laws or regulations simply because the courts may believe they are unwise or improvident. *Ferguson* v. *Skrupa,* 372 U.S. 726, 10 L. Ed. 2d 93, 96

(1963). Should practice and experience show that the deposits required under the Act are too large, the Illinois legislature will undoubtedly see fit to change the trust fund requirements. *Union Cemetery Ass'n.* v. *Cooper,* 414 Ill. 23, 110 N.E. 2d 239 (1953).

A number of state courts have directly considered the precise due process question involved here, and have upheld the validity of similar state laws claimed to be confiscatory.[2] In *Messerli* v. *Monarch Memorial Gardens, Inc.,* 397 P. 2d 34, 41 (Idaho Sup. Ct. 1964), the Court stated: "We think unquestionably the legislature, by enacting this statute, had in mind the protection of the public and the prevention of fraud." Likewise, in *Falkner* v. *Memorial Gardens Ass'n.,* 298 S.W. 2d 934, 941 (1957), the Texas Court of Civil Appeals found the fact that the legislature saw fit to impose on the business a regulation that to appellant may seem onerous "will not render the Act unconstitutional because the Legislature acting in the public interest was authorized to impose regulations on the business that operate uniformly on all persons engaged in such business."

In finding the Illinois Act constitutional, the Illinois Supreme Court concluded:

> . . . plaintiffs entered this business by choice . . . Practically, plantiffs will no longer be able to collect prospective profits in advance, without furnishing an adequate guarantee for performance. However, this does not prohibit the operation of this type of business. . . . Plaintiff's argument amounts to an admission that they will be unable to compete with others who sell the same merchandise and services at the time of actual need. However, the public welfare need not be abrogated to enable an individual to carry on his business in the particular manner in which he has elected to proceed. (*Memorial Gardens Ass'n., Inc.* v. *Smith,* 16 Ill. 2d 116, 156 N.E. 2d 587, 594 (1959), appeal dismissed 361 U.S. 31.

2. *See, e.g., State ex rel. Londerholm* v. *Anderson,* 195 Kan. 649, 408 P. 2d 864 (1965); *Utah Funeral Directors & Embalmers Ass'n.* v. *Memorial Gardens of the Valley, Inc.,* 17 Utah 2d 227, 408 P. 2d 190 (1965); *Reserve Vault Corp.* v. *Jones,* 234 Ark. 1011, 356 S.W. 2d 225 (1962); *State ex rel. Attorney General* v. *Smith Funeral Service, Inc.,* 177 Tenn. 41, 145 S.W. 2d 1021 (1940).

Finally, in one of only two cases where pre-need trust fund provisions were invalidated, Mr. Justice Given noted in a vigorous dissent that undertakers have successfully operated such businesses without receiving payment prior to delivery:

> . . . Assuming, however, that the defendant is correct in its contention, must the general welfare of the people of the State be abrogated, and the right to exercise the police power denied the legislature for the purpose of enabling an individual to remain in business? Must the police power of the State depend on such uncertainties . . . Does it not clearly appear that the contention of necessity for immediate deductions from the trust moneys contracted to be paid to the defendant is for the purpose only of pyramiding profits to the heights hoped for, not merely for the purpose of enabling defendant to remain in business? (*State* v. *Memorial Gardens Development Corp.,* 101 S.E. 2d 425 (W. Va. Sup. Ct. of App. 1957) (dissenting opinion)

The above shows that a nexus clearly exists between the interests of the public welfare and the measures chosen to

secure such interests. The fact that the legislature "might have evolved a different or better plan furnishes no reason for invalidating an enactment which represents the collective judgment of the law makers on the subject." *Memorial Gardens Ass'n., Inc.* v. *Smith*, 156 N.E. 2d at 597.

B.

The Trust Provisions Of The Act Do Not Deny Appellant Equal Protection Of The Law.

The Constitution does not require things which are different in fact to be treated in law as though they are the same. *Norvell* v. *State of Illinois*, 373 US. 420, 10 L. Ed. 2d 456, 459 (1963). The equal protection clause does not prohibit legislative classification or the imposition of statutory restraints on one class which are not imposed on another. *Metropolitan Cas. Ins. Co. of New York* v. *Brownell*, 294 U.S. 580, 79 L. Ed. 1070, 1072 (1935). In exercising its power of regulation, the state has broad discretion in the matter of classification, subject only to the requirement that the classification is reasonable, not arbitrary, and that it rests "upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike." *Johnson* v. *Robison*, 415 U.S. 361, 39 L. Ed. 2d 389 (1974). Legislation will be set aside as violative of the equal protection clause only if it is based on reasons totally unrelated to the pursuit of a legitimate state end. *McDonald* v. *Bd. of Election Com. of Chicago*, 394 U.S. 802, 22 L. Ed. 2d 739, 745 (1969).

The Illinois Funeral or Burial Funds Act is related to the legitimate state end of protecting the public from fraud. In view of the long interval between full receipt of the purchase price and contract performance in pre-need sales,

the Act validly distinguishes between these sales and sales of funeral merchandise made at the time of need. The Act uniformly applies to all individuals or corporations that contract for the sale of burial merchandise or services on a pre-need basis and collect payments in advance. This includes funeral directors, undertakers, embalmers or any other persons who elect to collect for such commodities in advance of actual need. Consequently, the Act does not deny appellant equal protection of the law.

Appellant essentially contends that equal protection is denied because burial societies are required by statute to deposit in trust only 35% of the funds collected from its members. It must be noted that the Illinois legislature has altogether prohibited the formation of burial societies by providing that "no person, firm, corporation, society or association shall enter business as a burial society after the effective dates of this amendatory Act of 1959." Ill. Rev. Stat., 1977, Ch. 73, § 951. Only those societies which were organized prior to the amended Act may continue to transact business. Unlike burial societies, appellant's business is not prohibited, but simply regulated.

The distinction between those burial societies allowed to operate and pre-need burial businesses readily justifies a difference in statutory treatment. Such societies are a form of mutual benefit association established to assure that each member will, upon death, receive a specified sum. The society is subject to stringent state regulation under the Illinois Insurance Code regarding its Articles of Incorporation, the management of its affairs, certain deposits to be maintained with the Director of Insurance, and the bonding of its officers. (§§ 952-53) The directors may not retain office for more than three years. (§ 952) The society must agree, in issuing certificates of membership, to pay a specified sum of money not to exceed $1,000, "which spe-

cified amount shall not be diminished during the existence of the contract." (§ 955) The certificates must be approved by the Director of Insurance, and the society must pay the burial benefit in "lawful money." (§ 956) The society may not require a member to purchase funeral supplies or services from any specific individual or corporation, nor agree to offer funeral supplies in lieu of the cash payment. (§ 957) The members pay a premium or assessment, 35% of which must be retained in cash or invested only in accordance with the Illinois Insurance Code. (§ 958) No investments or loans may be secured by real estate in which an officer or director has any financial interest. (§ 958.2) All claims must be approved or disapproved by the society within sixty days after receipt of proof of death. (§ 959) The society will be liquidated by the Director of Insurance if it substitutes funeral services or supplies for cash payments, fails to maintain the cash deposit, conducts its business fraudently, does not carry out its contracts in good faith, or is more than thirty days in arrears in payment of death claims after approval. (§ 959) Likewise, the individual members may by injunction prevent the doing of unlawful acts contrary to the Articles of Incorporation of the society. *Dale* v. *Hancock County Mutual Life Ass'n.*, 363 Ill. 222, 2 N.E. 2d 96, 98 (1936).

The fidiciary duties of the directors, officers and agents of a burial society to its members are readily apparent. All of the activities of the society are subject to direct scrutiny by its members, including their control over the election of the Board of Directors. Whereas the society exists for the benefit of its members, appellant's business is operated exclusively to provide the owners with a profit. Purchasers have no influence over the activities of the business and no way of assuring delivery of burial merchandise in the future. The Illinois legislature therefore properly

distinguished between such entities and treated pre-need burial businesses under a separate statutory scheme entitled "Public Health and Safety." In view of the nature of appellant's business, the 95% trust requirements bears a substantial relation to the public welfare.

Likewise the funds accepted by cemetery associations under the Cemetery Care Act, Ill. Rev. Stat., 1977, Ch. 21, § 64.1 *et seq.*, are entirely different from the funds collected by appellant. Such funds are collected in connection with the sale of a specific cemetery lot, grave, crypt and the like, and are paid for the maintenance of,

> . . . a cemetery and of the lots, graves, crypts, niches, family mausoleums, memorials, and markers therein; including cutting and trimming of lawn, shrubs and trees at reasonable intervals; keeping in repair the drains, water lines, roads, buildings, fences and other structures, in keeping with a well maintained cemetery; also overhead expense necessary for such purposes, including maintenance of machinery, tools and equipment for such care; compensation of employees, payment of insurance premiums, reasonable payments for employees pensions and other benefit plans, and maintaining necessary records of lot ownership, transfers and burials. Ill. Rev. Stat., 1977, Ch. 21, § 64.2.

The Act clearly envisions immediate performance under the contract with respect to the cemetery and the specific site purchased. Substantial sums may be employed by the cemetery association at the outset to care for the site. To insure continued care, the statute requires that a minimum of 15 percent of the sales price for a grave and 10% of the sales price for a crypt be set aside in trust, the net income of which is to be used for such future care. The statute requires that purchasers be informed that care will be furnished only in so far as the net income derived from the amount deposited in trust will permit. Where a contract pro-

vides for "special care" of any lot, grave, crypt, niche, or mausoleum, the full amount received must be deposited in trust. Ill. Rev. Stat., 1977, Ch. 21, § 64.4. Contracts made under the Cemetery Care Act are not *in futuro* contracts but are entered into to assure performance immediately and in perpetuity.

As stated, the merchandise sold by appellant is not even in existence at the time of sale and there is no immediate performance anticipated under the contract. While all the above statutes generally relate to funeral services and merchandise, the legislature need not regulate in the same manner all businesses and associations that deal with such commodities. The legislature may weigh relative needs and restrict the application of a legislative policy to less than the entire field. *Mabee* v. *White Plains Publishing Co., Inc.*, 327 U.S. 178, 184, 90 L. Ed. 607 (1945). Appellant is not denied equal protection of the law because a lesser amount of the funds collected by burial societies and cemetery associations must be deposited in trust.

CONCLUSION

For all these reasons appellee respectfully submits that the present appeal does not present a substantial federal question and that the decision below is so plainly correct as to warrant no further review. Appellee therefore respectfully moves this Honorable Court to dismiss this appeal.

Respectfully submitted,

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APPENDIX

Ill. Rev. Stat., 1969, Ch. 111½, § 73.105:

> **73.105 Expenses in custody and administration of funds.]** § 5. This Act shall not be construed to prohibit the trustee and trustee's depositary from being reimbursed and receiving from such funds their reasonable expenses in the custody and administration of such funds and the usual and reasonable compensation for their services as such trustee and trustee's depositary, provided that the combined expenses and compensation shall not exceed the total of 5% of the principal fund and 5% of the earnings of the fund so deposited under each of the agreements or series of agreements.

• • •

Ill. Rev. Stat., 1977, Ch. 21, § 64.2 provides in pertinent part:

> **64.2** § 2. **Definitions.]** The following words, terms and phrases used in this Act, for the purpose of this Act, have the following meanings:
>
> "Comptroller" means the Comptroller of the State of Illinois.
>
> "Care" means the maintenance of a cemetery and of the lots, graves, crypts, niches, family mausoleums, memorials, and markers therein; includng cutting and trimming of lawn, shrubs and trees at reasonable intervals; keeping in repair the drains, water lines, roads, buildings, fences and other structures, in keeping with a well maintained cemetery; also overhead expense necessary for such purposes, including maintenance of machinery, tools and equipment for such care; compensation of employees, payment of insurance premiums, reasonable payments for employees pension and other benefit plans, and maintaining necessary records of lot ownership, transfers and burials.

• • •

Ill. Rev. Stat., 1977, Ch. 21, § 64.4:

64.4 Care funds—Instrument regarding care to be furnished by cemetery authority.] § 4. Whenever a cemetery authority owning, operating, controlling or managing a privately operated cemetery accepts care funds, either in connection with the sale of a lot, grave, crypt or niche, or in pursuance of a contract, or whenever, as a condition precedent to the purchase of a lot, grave, crypt or niche such cemetery authority requires the establishment of a care fund or a deposit in an already existing care fund, then such cemetery authority shall execute and deliver to the person from whom received an instrument in writing which shall specifically state: (a) the nature and extent of the care to be furnished and (b) that such care shall be furnished only in so far as the net income derived from the amount deposited in trust will permit (the income from the amount so deposited less necessary expenditures of administering the trust shall be deemed the net income), and (c) that not less than the following amounts will be set aside and deposited in trust:

1.) For graves, 20¢ per square foot of the space sold or 15% of the sales price, whichever is the greater, with a minimum of $7.50 for each sale of a single adult grave.

2.) For a crypt, not less than 10% of the sales price with a minimum of $15.00 for each crypt sold.

3.) For a niche, not less than 10% of the sales price with a minimum of $5.00 for each niche sold.

4.) For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker, or monument, the full amount received.

Such setting aside and deposit shall be made by such cemetery authority not later than thirty (30) days after the close of the month in which was received the final payment on the purchase price of each lot, grave, crypt or niche, or the final payment for the general or special care of a lot, grave, crypt or niche or of a family mausoleum, memorial, marker or monument; and such amounts shall be held by such cemetery authority or by the trustee of the care funds of such cemetery authority in trust in perpetuity for the specific purposes stated in said written instrument.

Ill. Rev. Stat., 1977, Ch. 73, § 951:

951. § 339. Present Authorized Burial Societies May Transact Business.] Every society organized prior to the effective date of this amendatory Act of 1959 and which society on that date was transacting business under a certificate of authority issued by the Director may continue to transact such business subject to the provisions of this article, but except as provided in Section 336a[1] no person, firm, corporation, society or association shall enter business as a burial society after the effective date of this amendatory Act of 1959. As amended by act approved July 15, 1959. L. 1959, p. 1150.

Ill. Rev. Stat., 1977, Ch. 73 § 952:

952. §340. Article of Incorporation.] The articles of incorporation of a burial society shall state:

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(b) The mode and manner in which the corporate powers of the society shall be exercised; the manner of electing directors; the number of directors which shall not be less than 3 nor more than 7; terms of office of directors which shall be not more than 3 years; the manner of electing officers and filling vacancies and such other particulars as may be necessary to explain and manifest the object and purpose of the society and the manner in which it is to be conducted.

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Ill. Rev. Stat., 1977, Ch. 73, § 953:

953. § 341. Deposit Required.] (1) Every burial society shall maintain with the Director a deposit of

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1. Section 948a of this chapter.

cash or securities in an amount of at least one thousand dollars. Any society having a membership of more than twenty-five hundred members and less than five thousand members shall maintain a deposit with the director of five thousand dollars. Any society having a membership of more than five thousand members and less than ten thousand members shall maintain a deposit with the Director of ten thousand dollars. Any society having more than ten thousand members shall maintain a deposit with the Director of ten thousand dollars and an additional one thousand dollars for each one thousand members in excess of ten thousand.

(2) All deposits as required herein shall be in cash or in securities permitted by section 346.[1]

Ill Rev. Stat., 1977, Ch. 73, § 954:

954. § 342. Officers Bond.] The officer or officers of the society entrusted with the custody of its funds shall give bond to the association in double the amount of the minimum deposit required by this article, but in no event less than Two Thousand ($2,000) Dollars or more than Five Thousand ($5,000) Dollars, conditioned upon the faithful performance of his or their duties and accounting for the funds entrusted to his or their custody.

Ill. Rev. Stat., 1977, Ch. 73, § 955:

955. § 343. Certificate form.] (1) Every burial society shall issue a certificate of membership to each member, agreeing to pay upon death a specified sum of money not to exceed $1,000, which specified amount shall not be diminished during the existence of the contract. The form of certificate shall be submitted to the Director for his approval before the same shall be issued. Each certificate issued after the effective date of this Code, shall contain the following provisions, and

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1. Section 958 of this chapter.

shall be printed in clear readable type or uniform size except that the words in capital letters in the following form may be in larger type:

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956. § 344. Burial Benefit Payable in Lawful Money.] No society operating under or by virtue of this article shall pay a burial benefit or award other than in lawful money of the United States and any provision in any contract to the contrary shall be of no effect, nor shall any member of any society or representative or beneficiary of such member be required as a condition of his becoming a member, or otherwise, to purchase funeral supplies or burial services from any specified or designated person, firm or corporation so as to deprive the representative, beneficiary or family of any such member from procuring or purchasing said supplies and services in the open market.

Ill. Rev. Stat., 1977, Ch. 73, § 957:

957. § 345. Society and Directors or Officers May Not Advertise Funeral Supplies. No burial society nor any officer, director or agent of any burial society shall offer or make any oral or written agreement to furnish, or shall distribute or cause to be distributed any literature or advertising of any kind whatsoever which offers or purports to offer, funeral supplies of any kind in lieu of the cash payment upon the death of a member. Upon any violation of this section by any society, or officer, director or agent thereof, the Director shall proceed to liquidate such society in accordance with the provisions of Article XIII[1] [As amended by act approved July 6. 1937, L. 1937, p. 689.]

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1. Sections 799-833 of this chapter.

Ill. Rev. Stat., 1977, Ch. 73, § 958:

958. § 346. Benefit Account and Expense Account.] (1) All burial societies shall charge a premium or levy an assessment to be paid by the members. The society shall not use more than sixty-five per centum of such premium or assessment for the purpose of paying commissions, salaries and other expenses of operation, and the surplus and legal reserves shall constitute the benefit account of the society and shall be retained in cash or be invested in accordance with Article VIII.[1]

(2) No society shall invest in or loan upon any bond or note secured by mortgage or trust deed on real estate if an officer or director of such society has any financial interest in the real estate upon which the loan is made.

Amended by P.A. 80-624, § 1, eff. Oct. 1, 1977.

Ill. Rev. Stat., 1977, Ch. 73, § 959:

959. § 347. Failure to Maintain Deposit—Payment of Claims.] All claims filed with a society shall be approved or disapproved within sixty days after receipt of due proof of death and, if approved, shall be paid within thirty days after such approval. The Director shall proceed under Article XIII[1] to liquidate any society which shall fail to maintain the deposit required by this article, or shall conduct its business fradulently, or is not carrying out its contracts in good faith, or shall be thirty days or more in arrears in payment of death claims after the same have been allowed by the board of directors, or has violated any of the provisions of this article.

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1. Chapter 73, §§ 736 to 743.
1. Sections 799-833 of this chapter.